Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1976
No. 76-900

ERIE LACKAWANNA RAILWAY COMPANY,
Petitioner,

vs.

L. F. COLE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF OF PETITIONER, ERIE LACKAWANNA RAILWAY COMPANY

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Pursuant to Rule 24(4) of the Rules of the Supreme Court of the United States, Petitioner, Erie Lackawanna Railway Company, files this Reply Brief to address an argument first raised in Respondent's brief in opposition to the petition for certiorari.

Respondent contends at page 17 of his brief that, if Petitioner felt aggrieved by the District Court's Order of February 6, 1974, it could have, and should have, appealed that decision immediately. By so stating, however, Respondent overlooks the fact that it is well settled that a

remand order to a public law board is not a final appealable order within the ambit of 28 U.S.C.A. Section 1291.

Respondent relies upon this Court's decision in *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156 (1974) for the proposition that Petitioner could have immediately appealed the February 6, 1974 decision. Unfortunately for Respondent, that reliance is misplaced because *Eisen* is not relevant to the issue of the appealability of a remand order. It merely held that a district court's order permitting a suit to proceed as a class action and allocating the cost of notice did constitute a final appealable order within the scope of Section 1291.

However, the various courts of appeals and district courts have consistently held that a remand order for further proceedings is not a final judgment within the meaning of Section 1291. *Pauls v. Secretary of Air Force,* 457 F.2d 294, 297-298 (1st Cir. 1972); *Transportation-Communications Division v. St. Louis-San Francisco Ry. Co.,* 419 F.2d 933, 935 (8th Cir. 1969), *cert. den.* 400 U.S. 818; *United Transportation Union v. Illinois Central Railroad Company,* 433 F.2d 566, 568 (7th Cir. 1970), *cert. den.* 402 U.S. 915; *Central of Georgia Railway Company v. United Transportation Unions,* 353 F. Supp. 293, 306 (U.S. D.C., S.D., Ga., 1973).

Accordingly, Petitioner did not, as Respondent contends, have the option of appealing the District Court's 1974 order immediately because that order was clearly not a final appealable order. Its only course of action was to await the entry of a final judgment, to appeal therefrom, and, at that time, attempt to have the District Court's erroneous 1974 ruling overturned.

For all the reasons set forth in Petitioner's Petition for Certiorari, and for the reason that Respondent has set

forth no meritorious grounds for denial of the Petition, the Petition for Certiorari should be allowed.

Respectfully submitted,

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